

Premium Leakage on Commercial Construction Providers

Toward the end of 2018, the Insurance Subcommittee reporting to the Employee Misclassification Advisory Committee (EMAC) expressed concern that there was a significant amount of workers' compensation premium being lost by insurance carriers relative to Commercial Construction Projects in the State of Tennessee. Commercial Construction Projects are defined as construction, erection, remodeling, repair, improvement, alteration, or demolition of buildings or structures, (a) not including four or less family unit residences which are three stories or less in height; (b) not including buildings or structures being built for occupancy by the general public which do not equal or exceed \$1.5 million in cost; or (c) not including construction projects performed by any municipality, government subdivision, or utility.

Under the law, which has been in place since 2011, business owners and officers are allowed to exempt themselves from coverage. However, there is a limitation on the number of exemptions allowed for commercial construction projects. A *maximum* of three (3) exemptions of "direct laborers" (principals who do "hands on work": class codes 5604 and 5606 excepted) may be designated by the general contractor. All other direct laborers are covered for the job and an appropriate premium must be charged for these individuals. NCCI Basic Manual Tennessee Exception rule 2.E.1.b provides a method for separating executive officers commercial construction work from residential work, while rule 2.E.3 provides the same for partners or sole proprietors.

In our informal discussions with representatives of Tennessee residual market writers, we learned that there is a generic countrywide process for obtaining payroll information and exemptions on paper audits, but it lacks Tennessee specificity. The right questions have to consistently be asked on payroll audits in order to assess the proper payroll for commercial construction providers. Comments from servicing carriers support the notion that there is significant leakage across the board on premium for commercial construction service providers. It's clear that if injured, these principals would have access to Tennessee workers' compensation benefits. In many instances, this exposure is going unaccounted for, depriving carriers of their rightful premium. What can be done to address this problem?

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